Now this is a very strange objection for the appellant to take for if it should succeed and some person or persons be traced claiming to have an interest in the estate of Mr. Lee or Mr. Khoo (the latter can also with safety be presumed to be dead) it must, of course, follow that there would be yet a third claimant to the land who, no doubt, would dispute the appellant's claim to it, which is derived from Madam Sng's alleged title by adverse possession. It is thus manifest that this objection is taken merely to defeat Madam Lee and with no hope of any material benefit accruing from it to the appellant. In short it has no merit particularly when it is remembered that should at any time any representative of either of these estates come forward from the dim past it would be quite open to him to proceed against Madam Lee. One thing, however, is very clear — namely that no objection on these lines was made at the time of the trial (as is readily understandable) and none would have been made now by the appellant had he succeeded in persuading the trial Judge to make the award in his favour. In short the appellant accepted the jurisdiction of the Court below and now seeks to question it because he did not like the outcome. In my opinion he must clearly be estopped from so doing. He had every opportunity of raising this objection in the Court below yet he failed to do; his interests were in no way prejudiced by the fact that no attempt was made to serve notices on these other parties and should these parties exist (which is most doubtful) they can proceed against Madam Lee under proviso 3 to section 40 (2) of the Ordinance.

I would dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Muthu & Co.; Braddel Bros.*

AHMAD BIN HASSAN v. PUBLIC PROSECUTOR

[C.A. (Thomson, C.J., Hill and Syed Sheh Barakbah, JJ.) January 14, 1958]

[K.L. — F.M. Criminal Appeal No. 57 of 1957]

Penal Code, s.377 — Unnatural offence by adult on juvenile — Sentence of whipping.

Unnatural offence committed by an adult on a juvenile merits severe punishment. However, in view of the well-known psychological connection between the giving and the suffering of pain and sexual perversion, a sentence of whipping is not a suitable punishment for such offence.

COURT OF APPEAL.

Appellant in person.

Mohd. Suffian (Sr. Federal Counsel) for the respondent.

The judgment of the Court was delivered by —

Thomson, C.J.: — This appellant was convicted at Kuala Lumpur for committing an unnatural offence in contravention of section 377 of the Penal Code and sentenced to six years' imprisonment and a whipping of six strokes. He appealed against his sentence but not against his conviction.

The appellant is a man of 26 years of age and the offence was committed on a boy of 11. The offence was committed on 11th April, 1957. The appellant was convicted on 21st November, 1957, and the appeal was heard on 7th January, 1958.

In our view the sentence of imprisonment was fully justified but the sentence of corporal punishment was not a suitable one and we accordingly quashed so much of the sentence as consisted of an order for corporal punishment.

The offence was a serious one, as is indeed every offence of this sort committed by an adult on a juvenile, and fully merited severe punishment. On the other hand in view of the well-known psychological connection between the giving and the suffering of pain and sexual perversion we are of the opinion that in cases involving sexual perversion flogging is not a suitable punishment.

Order of whipping revoked.

Appeal dismissed.